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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/532,686	03/22/2000	Jonathan D. Trumbull	6678.US.01	8859

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EXAMINER

MARSCHER, ARDIN H

ART UNIT PAPER NUMBER

1631

DATE MAILED: 07/25/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/532,686

Applicant(s)

TRUMBULL ET AL.

Examiner

Ardin Marschel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 March 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) ~~Paper No(s)~~ (3 sheets)
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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### **DETAILED ACTION**

The abstract of the disclosure is objected to because it is too long. A shortened abstract is required of a maximum of 150 words. Applicants are reminded that the new abstract must be submitted on its own single sheet of paper. Correction is required. See MPEP § 608.01(b).

Applicant is hereby notified that the required timing for the correction of drawings has changed. See the last 6 lines on the sheet which is attached entitled "Attachment for PTO-948 (Rev. 03/01 or earlier)". Due to the above notification Applicant is required to submit drawing corrections within the time period set for responding to this Office action. Failure to respond to this requirement may result in abandonment of the instant application or a notice of a failure to fully respond to this Office action.

### ***Claim Rejections - 35 USC § 112***

Claims 1-34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Neither the instant method claims nor the apparatus claims cite steps or means that carry out or implement the preambles of the respective independent claims. For example, instant claim 1, lines 1-2, directs the method therein to "running a plurality of tests concurrently to obtain electrophysiological data". Consideration of the actual method steps in said claim 1 reveals that steps are directed to providing, introducing, and collecting but without requiring that tests per se be performed, much less, concurrently. It is noted that data collection as in step (c) of claim 1 is not directed to

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any testing. Similarly, the apparatus claim 11, lines 1-2, contains the same directives but claim 11, (a) – (c) lacks any test performance means and also lacks any concurrent testing means or requirement. Thus, these claims and those dependent therefrom are vague and indefinite because it is unclear whether the respective preambles govern the metes and bounds of the claims or the actual claim steps. Clarification via clearer claim wording is requested.

***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-3, 5-7, 11-15, 20, 21, 23, 24, 26-28, and 30 are rejected under 35 U.S.C. 102(b) and (e) as being clearly anticipated by Sweeten et al. (P/N 3,696,805).

In the title, abstract, Figure 1 and the section entitled "FIELD OF THE INVENTION" in column 1, lines 15-23, and the section entitled "SUMMARY OF THE INVENTION" in column 1, lines 45-63, a multiple (plural) patient testing method and apparatus is disclosed. A control system is utilized as disclosed in column 1, lines 60-

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63, as also required in instant claims 7 and 10. Automation via computer is disclosed in column 3, lines 16-22, as also required in instant claims 6 and 23. An electrocardiogram (ECG) is disclosed as one of the testing applications in column 3, lines 16-22, as also required in instant claims 11-13 and 15. Signal processing is also disclosed in said column 3 with an ECG normally operating substantially automatically as also required in instant claim 14, 20, and 21. The rooms of the medical exam apparatus serve to prevent movement of patients at least to some extent as required in instant claims 2 and 27. These disclosures anticipate the above listed instant claims.

Claims 1-3, 5-12, 14-16, 20, 21, 23, 27, 28, and 30 are rejected under 35 U.S.C. 102(b) and (e) as being clearly anticipated by Kirk et al. (P/N 5,390,238).

Kirk et al. in the title, abstract, Figures 1-5 and the disclosure taken as a whole discloses a patient monitoring system which tests patient condition, vital signs, medicine taking, home (patient movement prevention to some extent at least )etc., stores data from such testing for usage by various monitoring personnel as well as sounding alarms after data analysis indicates an alarm condition that needs further attention thus anticipating the above listed claims regarding methods and apparatus.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-7, 11-15, 17-21, 23, 24, and 26-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sweeten et al.(P/N 3,696,805); taken further in view of Anderson et al.(P/N 3,998,215).

The above rejection summarized the descriptions in Sweeten et al. inclusive of ECG utilization which is deemed to suggest and motivate whatever that methodology entails. Anderson et al. in column 1, lines 24-51, further suggests and motivates the usage of patient and electrode washing thoroughly connected with the fluid gel material needed for ECG electrode connections. This reduces carryover of gel and includes air escape from the electrodes as washing is generally performed as also required in instant claim 29. It is noted that a generic definition of perfusion includes pouring a liquid over or through an item herein deemed to include the ECG electrodes.

Thus, it would have been obvious to someone of ordinary skill in the art at the time of the instant invention to practice ECG testing in the methods and apparatus of

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Sweeten et al. with the suggested washing in such a procedure as suggested in Anderson et al. thus resulting in the washing embodiments of the instant claims.

Claims 1-3, 5-16, 20-28, and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Segalowitz(P/N 5,511,553).

Segalowitz describes an ECG system with numerous details in the abstract and the section entitled "SUMMARY OF THE INVENTION" in columns 9-12. In particular, the usage of such an automated monitoring system with a plurality of patients is suggested and motivated in column 44, lines 32-39, via the large number of patient suggestion. Included in the ECG system is analog to digital conversion in the flow charts of Figure 15A as also required in instant claim 22.

Thus, it would have been obvious to someone of ordinary skill in the art at the time of the instant invention to perform ECG testing of the reference on a large number of patients thus resulting in the performance of the instant claims including analog to digital data conversion.

Claims 1-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Segalowitz(P/N 5,511,553), and further in view of Anderson et al.(P/N 3,998,215).

The description of Segalowitz has been summarized above but lacks the description of washing in connection with ECG measurements. Anderson et al. suggests and motivates washing in and around ECG electrodes in column 1, lines 24-51.

Thus, it would have been obvious to someone of ordinary skill in the art at the time of the instant invention to wash patients due to ECG electrode usage as suggested

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and motivated in Anderson et al. with an ECG system and method description as in Segalowitz thus resulting in the practice of the instant invention.

The citation to "International Search Report" on the enclosed PTO Form 1449 is lined through due to its lacking a date of publication as required for citations of said forms.

No claim is allowed.

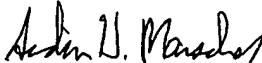
Papers related to this application may be submitted to Technical Center 1600 by facsimile transmission. Papers should be faxed to Technical Center 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notices published in the Official Gazette, 1096 OG 30 (November 15, 1988), 1156 OG 61 (November 16, 1993), and 1157 OG 94 (December 28, 1993)(See 37 CFR § 1.6(d)). The CM1 Fax Center number is either (703)308-4242 or (703)305-3014.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ardin Marschel, Ph.D., whose telephone number is (703)308-3894. The examiner can normally be reached on Monday-Friday from 8 A.M. to 4 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward, Ph.D., can be reached on (703)308-4028.

Any inquiry of a general nature or relating to the status of this application should be directed to Patent Analyst, Tina Plunkett, whose telephone number is (703)305-3524 or to the Technical Center receptionist whose telephone number is (703) 308-0196.

July 24, 2002

  
ARDIN H. MARSCHEL  
PRIMARY EXAMINER